APPELLATE COURT

OF THE

State of Connecticut

JUDICIAL DISTRICT OF MIDDLESEX

A.C. 42061
A.C. 42062

STATE OF CONNECTICUT

V.

WILLIAM BRADLEY

BRIEF OF THE STATE OF CONNECTICUT-APPELLEE

To Be Argued By:

JAMES M. RALLS
Assistant State's Attorney
Office Of The Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Telephone: (860) 258-5807
Facsimile: (860) 258-5828
Juris Number: 401844
James.ralls@ct.gov ◆ DCJ.OCSA.Appellate@ct.gov

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NATURE OF THE PROCEEDINGS

The defendant was charged in one file with, inter alia, sale of a controlled substance, and in another file with violation of probation. State v. Bradley, 2018 WL 3117117; M09M-CR17-0210994-S & MMX-CR14-0204977-T; C.G.S. §§ 21a – 277(b) & 53a-32. The defendant filed Motions to dismiss in each file, the court, Keegan, J, held hearings thereon and later denied same by Memorandum decision June 1, 2018. Bradley, 1-2.*[1] On August 28, 2018, the defendant pled nolo contendere, conditioned on the right to appeal, to the sale and probation charges, and the court imposed an unconditional discharge on the first file and 66 months, execution suspended, with 2 years probation on the second. Id. Defendant appealed in both files, and the appeals were consolidated. See court files.

COUNTERSTATEMENT OF THE FACTS

The state noted at the plea canvass that on December 20, 2016, the defendant was sentenced to 7 years, suspended, and 3 years probation for possession of marijuana with intent to sell, per C.G.S. § 21a-277(b). T 4-5. Less than a month later, on January 13, 2017, probation officers arrived at defendant's residence for a home visit and observed a digital scale, 30 ounces of marijuana, 6 cell phones and almost four thousand dollars in cash, despite the fact that defendant's disability payment was $730 a month. T 4.

ARGUMENT

Defendant claims his convictions violated equal protection, alleging that the intent of section 21a-277(b) is to discriminate against racial minorities. D/B 4-30. This claim fails because the defendant lacked standing to vindicate the rights of minorities, and because the statute is not based on any discriminatory purpose.

I. DEFENDANT LACKS STANDING TO VINDICATE EQUAL PROTECTION RIGHTS OF RACIAL MINORITIES

The judgement should be affirmed on alternative grounds, i.e., that because the non-

[1] The following abbreviations are used: D/B: defendant's brief; Apx: appendix; Exh: exhibit; T: transcripts, as follows: 1T: 11/15/17; 2T: 2/7/18.

minority defendant lacks standing to vindicate the equal protection rights of minorities allegedly discriminated against by 21a-277(b), there was no jurisdiction. See State v. Winfrey, 302 Conn. 195, 209 (2011) (affirming on alternate grounds).

A. Trial Court Proceedings And Decision

On December 27, the court ordered the parties to submit briefs on whether defendant, who the court found is Caucasian, had standing to raise an equal protection claim on behalf of African Americans when he was not a member of that class. Bradley, 1-2. The parties filed supplemental briefs on January 26, 2018, the court heard argument on February 7, and the Memorandum decision was issued June 1, 2018. Id.

The court noted that because standing implicates subject matter jurisdiction, it must be resolved before proceeding to the merits. Bradley, 2-3. Standing is established by showing aggrievement, which involves two factors. Id. First, the party must demonstrate a "specific, personal and legal interest" in the subject matter, as opposed to the general interest which concerns all members of the public. Id. Second, the party must show that his interest has been specially and injuriously affected. Id.

Although the state argued that parties generally may assert only their own equal protection rights rather than those of third parties, the court concluded that defendant's "genuine likelihood of criminal liability" gave him a personal interest in whether the statute violated the rights of minorities, so that he had standing and need not rely on injuries against third parties. Id. 3, citing State v. Long, 268 Conn. 508, 532 (2004).

B. Defendant Suffered No Disparate Impact Or Injury, He Has No Specific Legal Interest In Or Relation To Minorities, And Minorities Face No Hindrance Protecting Their Own Rights

The trial court erred in finding that the non-minority defendant had standing to claim a violation of the equal protection rights of minorities. Normally, litigants must assert their own equal protection rights rather than the rights or interests of third parties. Kowalski v. Tesmer, 543 U.S. 125, 129 (2004); Powers v. Ohio, 499 U.S. 400, 410 (1991); State v. Iban C, 275 Conn. 624, 665 (2005) (party precluded from asserting constitutional rights of

another); Superintendant of Police v. FOIC, 222 Conn. 621, 630 (1992) (same); Strobel v. Strobel, 64 Conn. App. 614, 620 (2001) (party cannot gain standing by asserting due process rights of another). This is a fundamental restriction on a court's jurisdiction or authority to act. Kowalski, supra; Iban C, at 664. Because affected parties normally have both the incentive and wherewithal to challenge governmental action infringing their rights, allowing third parties to raise such claims would encourage courts to decide questions in the abstract, without a zealous airing of grievances. Kowalski, supra.

Although there are limited exceptions in which criminal defendants may raise the rights of third parties, the following criteria must be met:

> The litigant must have suffered an "injury in fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute, ... must have a close relation to the third party, ... and there must exist some hindrance to the third party's ability to protect his or her own interests. - Powers, 499 U.S. at 411; Kowalski, 543 U.S. at 129-30;

In a related formulation, to have standing to raise this claim on behalf of minorities, the defendant must show that he is "classically aggrieved", i.e., (1) that he has a specific, personal and legal interest, as opposed to the general interest held by members of the public, and (2) that his interest will be injuriously affected. Long, 268 Conn. at 531-3; Kawecki v. Saas, 132 Conn. App. 644, 651 (2011). Thus, the defendant must make a colorable claim of direct injury to his own interests rather than merely asserting the rights or interests of minorities. Iban C, 275 Conn. at 664-66.

A comparison of this case with Powers, which allowed non-minority defendants to raise the rights of minorities discriminated against in jury selection, shows that the standing criteria have not been satisfied here. First, as to whether a defendant's interests will be injured, the discriminatory use of peremptories causes all defendants "cognizable injury" regardless of race because it casts doubt on the integrity of their trial. Powers, 499 U.S. at 411-13. However, the defendant here did not demonstrate, and the trial court never found, that higher prosecution rates against minorities would cause any "injury in fact" to him, or that his personal interests have been "specially and injuriously affected" by it. To the contrary, if Caucasians are prosecuted less often, then the defendant gained an advantage.

See State v. Campbell, 224 Conn. 168, 187-88 (1992) (defendant lacked standing: not member of disadvantaged class, not aggrieved by disparate treatment, but in fact advantaged); Monroe v. Horwitch, 215 Conn. 469, 473 (1990) (must make colorable claim of direct injury likely to be suffered).

Second, there is a close relationship between a defendant and excluded jurors such that he is an effective proponent of their rights, as both have a personal and legal interest in preventing discrimination, maintaining confidence in verdicts and reversing tainted convictions. Powers, 413; see Griswold v. Conn., 381 U.S. 479, (1965) (clinic and doctor may raise rights of patients to use contraceptives); Craig v. Boren, 429 U.S. 190 (1976) (vendor may raise rights of male customers to buy alcohol); Dept. Labor v. Triplett, 494 U.S. 715 (1990) (attorney may raise rights of clients regarding attorney fee restrictions). Indeed, defendants are in a better position than jurors to notice and object to improper patterns in juror exclusion. By contrast, defendant here did not allege, and the trial court never found, that he had a close relationship to minority marijuana sellers; "indeed, [he has] no relationship at all." Kowalski, 543 U.S. at 131. As such, the defendant has no more specific, personal or legal interest in preventing discrimination against minorities than any other member of the general public. Long, 268 Conn. at 532.

Third, while citizens may sue for wrongful exclusion from jury duty, as a practical matter, the barriers to suit are "daunting"; jurors are not parties, are not present when peremptories are exercised, have no ability to determine the basis for dismissal, possess no opportunity to be heard when excluded and have no financial stake in litigation, yet endure its economic burdens. Powers, 499 U.S. at 414-15. But because minority marijuana dealers would face no hindrance in raising an equal protection claim against this statute, and indeed have incentive to do so in hopes of gaining a dismissal, this issue is not one which is likely to evade judicial review, since it can be raised by any African American defendant. Because the defendant had no legal interest in the disparate treatment of minorities and suffered no injury in fact, because he had no close relation to minority defendants and thus

no more than a general interest in the statute, and because minorities are fully able to protect their own rights, he had no standing to assert their equal protection rights.

The trial court, however, concluded that defendant need not be a member of the targeted class because a "genuine likelihood of criminal liability" was sufficient. Bradley, at 3, quoting Long, 268 Conn. at 532. But the court took this statement out of context. In Long the defendant, an insanity acquittee, claimed that the statute governing his release, § 17a-593, violated his own equal protection rights, because he suffered disparate treatment compared to inmates who were civilly committed to mental hospitals. Id. 514-28. While the state claimed he was not "aggrieved" because disparities in treatment were insignificant, Long found sufficient aggrievement because defendant faced a "genuine likelihood" of deprivation of liberty via further recommitment under the statute Id. 528-32. Therefore, the language quoted in Long, that those facing a "genuine likelihood of criminal liability" have standing, concerned parties advocating their own rights, rather than those of third parties.

The trial court's citation to other authority was also wide of the mark. Bradley, at 3, citing Bond v. U.S., 564 U.S. 211, 217 (2011); Bd of Pardons v. FOIC, 210 Conn. 646, 648-50 (1989); Donahue v. Southington, 259 Conn. 783, 791-92 (2002). Bond observed that a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Bond, 564 U.S. at 216-20. Nonetheless, Bond allowed a private individual to challenge a statute as intruding on state sovereignty because federalism does not merely concern the rights of states, but also protects individuals from federal overreach. Id. 221-23. Defendant there had standing to claim that the public policy of her state was wrongly displaced by federal statute because she might not face prosecution or punishment under state law. Id. 224-25. Again, however, defendant here makes no claim that any disparate impact in the statute interferes with his own rights.

Other cases the trial court relied on concern litigants raising their own rights, rather than those of third parties. Board members are aggrieved by, and thus have standing to challenge the validity of, an order requiring public deliberations on Board matters because

noncompliance risks criminal prosecution. Bd of Pardons, 210 Conn. at 648-50. Because Board members were asserting their own rights, "a genuine likelihood of criminal liability" was sufficient to confer standing. Id. 650. Likewise, a town has standing to raise an equal protection challenge to the use of certain wage tables because its suit is "clearly" based on its own liability for increased compensation. Southington, 259 Conn. at 792.

In sum, the fact that the defendant faced criminal liability was insufficient by itself to allow him to raise the rights of minority defendants. Indeed, if that were the test, then all criminal defendants could raise equal protection claims on behalf of all other groups, regardless of the fact that they are not injured by discrimination or disparate impact and have no relationship to injured parties, who are fully able to protect their own rights. Because this defendant makes no claim of disparate treatment to any group he is a member of, the court erred in holding that he had standing to raise the rights of third party minority marijuana dealers.

II. THE PROHIBITION ON SALE OF MARIJUANA IS NOT BASED ON A RACIALLY DISCRIMINATORY PURPOSE

Although defendant claims that prohibiting marijuana sales violates federal equal protection; D/B 4-30;*[2] he cannot show a racially discriminatory purpose in the statute.

A. Facts

At the hearing on defendant's motion to dismiss, Shenandoah University Professor Jon Gettman testified, and his report on arrests for marijuana offenses was admitted as an exhibit. See court file, exh __; 1T. Gettman relied on three sources: FBI data on marijuana offense arrests from 1994 to 2015; Census Bureau data on population by race; and federal data on use of marijuana by race from 2002 to 2009. MD 7. Gettman's testimony and report claimed that arrest rates in Connecticut for marijuana sales are approximately 4 times greater for African Americans than Caucasians, and that this cannot be explained by

[2] Although the defendant also cites the state constitution, his failure to separately brief that issue renders it unreviewable. Iban C., 275 Conn. at 656 n.17.

differences in marijuana usage in those populations. Id.

B. Trial Court Decision

The court noted that to implicate the equal protection clause, the defendant must show that this facially neutral statute has a disparate impact on a particular group and was motivated by discriminatory animus. M/D 5. As to the former, the court concluded that Gettman demonstrated a disparate impact on African American residents compared to white residents of the state. MD 8. As to discriminatory intent, while defendant claimed that the commissioner of the Federal Bureau of Narcotics had racist motives in lobbying for the Uniform State Narcotic Drug Act when Connecticut adopted it in the 1930s, there was no evidence racist views actually influenced the Legislature. Id. 6-7 & n.9, 12. *[3]

C. Legal Principles

The federal equal protection clause requires the uniform treatment of persons standing in the same relation to the governmental action or statute challenged. Broadnax v. New Haven, 294 Conn. 280, 300 (2009); Kerrigan v. Comm. Public Health, 289 Conn. 135, 157-58 (2008). Where, as here, a statute is facially neutral, the defendant must show both that it has a disparate impact on a particular group, and that this impact resulted from a discriminatory intent or purpose. Personnel Adm'r v. Freeney, 442 U.S. 256, 272 (1979); Arlington Heights v. Met. Housing Devel, 429 U.S. 252, 264-65 (1977). A defendant must show that a discriminatory purpose was a motivating factor in its enactment, i.e., that it was adopted at least in part "because of," and not merely "in spite of," its adverse effect on the group. Personnel Adm'r, 442 U.S. at 279. Discriminatory purpose may be shown from legislative history, the manner of adoption, the law's application and other circumstantial evidence. See Arlington Heights, 429 U.S. at 265-69. If the defendant proves that a

[3] The court also found that because there was not such a stark pattern as would lead to an "inescapable conclusion", "mathematical demonstration" or clear pattern of discrimination, "unexplainable on grounds other than race;" MD 8, citing Arlington Heights v. Met. Housing Devel, 429 U.S. 252, 266 (1977); Gomillion v. Lightfoot, 364 U.S. 339, 340-41 (1960); Yick Wo v. Hopkins, 118 U.S. 356, 358-59 (1886); disparate impact alone was insufficient to prove intentional racial discrimination. MD 9.

discriminatory purpose was a "substantial" or "motivating" factor in enactment, the burden shifts to the state to show that the law would nonetheless have been enacted without this factor. Hunter v. Underwood, 471 U.S. 222, 228 (1985).

D. Defendant Cannot Show A Racially Discriminatory Purpose

Although defendant claims that prohibition of marijuana sales violates equal protection, he cannot show it was motivated by a discriminatory purpose.

The terms of the statute in question provide that:

> (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter or chapter 420f, any controlled substance other than a (A) narcotic substance, or (B) hallucinogenic substance. (2) Any person who violates subdivision (1) of this subsection (A) for a first offense, may be fined not more than twenty-five thousand dollars or imprisoned not more than seven years, or be both fined and imprisoned, and (B) for any subsequent offense, may be fined not more than one hundred thousand dollars or imprisoned not more than fifteen years, or be both fined and imprisoned. - C.G.S. § 21a-277(b)(1) [see Apx][*4]

It is clear that the statute is neutral on its face.

As to disparate impact, the trial court accepted professor Gettman's conclusion, that black Connecticut residents are in fact impacted by the criminalization of marijuana sales to much a greater extent than whites. MD 8. Thus, the question is whether this impact resulted from a discriminatory intent or purpose.

Although the defendant relies in part on legislative history to show discriminatory purpose; D/B 15-18; attempts to glean intent from legislative history must be undertaken with caution. As one Justice noted:

> I should concur in this result more readily if the Court could reach it by analysis of the statute instead of by psychoanalysis of Congress. When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of Congressmen and act according to the impression we think this history should have made on them. Never having been a Congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute. - U.S. v. Public Utilities Commission, 345 U.S. 295, 319 (1953) (Jackson, J., concurring).

Even when courts do look to legislative history, they normally do so to determine what vice

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[4] Sale of narcotics and hallucinogens is prohibited under subsection 21a-277(a).

the law was trying to remedy, rather than whether a facially neutral statute was in fact motivated by an improper discriminatory purpose on the part of both the Legislature which passed the bill and the Governor who signed it into law. As the Supreme Court observed,

> Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork. - Hunter, 471 U.S. at 228, citing U.S. v. O'Brien, 391 U.S. 367, 383–384 (1968) (footnote omitted).

Marijuana sales were first limited in Connecticut in 1935, when our Legislature adopted the Uniform State Narcotic Drug Act. See D/B Apx 125-50; H.B. 852, Chap. 238 (1935). Then, in 1939, sales were criminalized entirely in the Narcotic Drug Act. D/B Apx 155-66; H.B. 598, Chap. 201 (1939).

The defendant cites statements in the legislative history of the 1935 and 1939 bills indicating that the Legislature adopted these provisions to conform to federal law and the laws of other states. See D/B 15, 18-21; D/B Apx 151-54, 167 (stating that: many other states demanded and adopted the act; federal representatives were present at the hearing; bill is practically a repetition of federal Harrison Act; drug abuse can only be controlled by uniform legislation; 1939 amendments needed to conform with federal law and other states). This part of the legislative history in essence accords with the general presumption that having uniform laws with other states and federal law is a benefit in and of itself. See 70 C.J.S. Pensions § 15 (goal of ERISA was to replace patchwork of state laws, promote uniformity in treatment and protect persons from conflicting state regulations or between states and federal government); Marrocco v. Giardino, 255 Conn. 617, 627 (2001) (child support guidelines intended to provide uniform procedures, promote equality/ensure consistent treatment, improve efficiency and conform to federal and state mandates). The state therefore agrees that desire for uniformity with other states was a substantial or motivating factor in prohibiting marijuana sales in the 1930s (and may be a motivating

factor in current decriminalization efforts).

The defendant also notes that although marijuana had previously been legal in the United States, by 1931 over half the states had outlawed it, and that it was outlawed here in part because lawmakers believed it was addictive and dangerous. D/B 5-13. The legislative history does include statements noting that: the State Medical Society endorsed the uniform Act; the American Medical Association participated in drafting it; doctors favored the act "unanimously;" cannabis was being sold to children, had caused murderous rampages and was a "very serious problem." D/B Apx A151-2. Even comments against the bill, argued only that marijuana was not yet a problem in Connecticut. D/B Apx A153. Because prohibition of substances is a common method used to reduce supply, discourage use and prevent addiction, and because legislative comments support this view, a motivating factor here appears to have been that lawmakers believed, rightly or wrongly, that marijuana was addictive and/or dangerous.

However, the defendant has not proven his main hypothesis - i.e., that racial discrimination was a motivating factor in passing this Connecticut statute 80 years ago. D/B 12-25. He claims marijuana use became associated with minorities and poor whites in the 1900s due to racist and xenophobic attitudes, and that the first Commissioner of the federal Bureau of Narcotics, who supposedly harbored racist and other improper motivations, allegedly was the driving force behind laws criminalizing marijuana. D/B 8-15, 18-21. But while racism and xenophobia existed, and appears to persist, in some quarters, defendant cannot show that the trial court's factual finding, i.e., that the Legislature did not harbor a substantial discriminatory purpose in prohibiting the sale of marijuana, is clearly erroneous. Pr.Bk. § 60-5 (factual findings must be proven clearly erroneous).

The defendant claims that in the late 1800s, many newspapers began decrying the evils of marijuana due to racism, and cites various incidents in the South. D/B 8-10. He does not, however, cite evidence that Connecticut papers likewise adopted racist views, or that our citizenry, much less our Legislature and Governor, agreed.

Defendant posits that Harry Anslinger, federal Bureau of Narcotics commissioner in the 1930s, harbored racist views and other improper motives, and was the driving force behind laws criminalizing marijuana. D/B 12-20. Even if Anslinger's motives were impure, however, there is no evidence our Legislature was aware of, much less shared those views. While Defendant cites statements by a Mr. Burns*[5] in 1935 opposing the act, those remarks do not support his thesis. Burns made several points in opposition, i.e., that the act: was practically a repetition of the "Harrison Act;" was an attempt by Mr. Anslinger to register persons throughout the country; and that it would control the use of "hashish or bhang" cigarettes, but there was no evidence of its use in the state. See D/B Apx A153. He also argued that the act would improperly impose liability and fines on medical providers if their employees became addicts and mishandled or abused drugs. Id.

The Harrison Narcotics Tax Act of 1914 regulated and taxed the production, importation and distribution of opiates and coca products. See Linder v. U.S., 268 U.S. 5, 12 (1925), citing Harrison Narcotic Law, 38 Stat. 785, c. 1 (1914). However, that the Uniform State Narcotic Drug Act was a near repetition of it merely reinforces the notion that it was meant to conform with federal law. While Burns claimed the act was an attempt by Anslinger to regulate the production and distribution of those drugs, and to penalize their use, he did not even hint that it was driven by racist or improper motives. Burns' belief, that there was no evidence of marijuana abuse in the state, indicated that he might in fact support the bill if there were such evidence. Finally, while Burns' view on the criminal liability of medical employers may have been inaccurate, he nowhere implied that the bill was motivated "because of" - or even "in spite of" - any adverse effect on minorities. Thus, Burns gave no suggestion that racial discrimination was a motivating factor behind

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[5] Defendant speculates that reference to "Mr. Burns" in legislative history was likely a scrivener's error, and that the speaker likely was Hugh Beirne, Secretary of the State Board of Pharmacy Commission. D/B 18. Because the speaker did not introduce himself by title or otherwise indicate that he spoke on behalf of the Pharmacy Commission, there is no evidence to support this assertion.

Anslinger, much less the uniform law, and defendant points to no other mention of Anslinger in the legislative history. In sum, there is no indication that the Legislature was even aware of Anslinger's alleged bias, much less that it adopted the bill, and that the Governor signed it, because of improper, discriminatory motives.

Although the defendant also relies on Hunter v. Underwood, 471 U.S. 222 (1985), the facts there are distinguishable. There, the plaintiff alleged that section 182 of the Alabama constitution, providing for the loss of voting rights for those convicted of crimes of "moral turpitude," was adopted in 1901 with the discriminatory intent to disenfranchise blacks. Id. As to disparate impact, within two years of its adoption, the provision had disenfranchised 10 times as many blacks as whites; moreover, the disparate effect persisted, for blacks were still 1.7 times as likely to suffer disenfranchisement as whites. Id. 227. In addition, the evidence of discriminatory motive was striking. The record showed that the Alabama constitutional convention was "part of a movement that swept the post-Reconstruction South to disenfranchise blacks." Id. 229. The all-white delegates thereto "were not secretive about their purpose"; rather, the "zeal for white supremacy ran rampant at the convention," with the president of the convention stating "And what is it we want to do? Why, it is within the limits imposed by the federal constitution, to establish white supremacy in this state." Id. Moreover, most of the crimes contained in the report to the suffrage committee of the convention were generated from a local court where "nearly all [the] cases involved Negroes." Id. 232. Even the state's counsel admitted at oral argument that it would be "very blind and naïve" to argue that race "was not a factor in the enactment of section 182; that race did not play a part in the decisions of those people who were at the constitutional convention of 1901 and I won't do that." Id. 230. The Supreme Court therefore concluded that the provision was motivated by a desire to discriminate against blacks, and because it continued to have that effect, it violated equal protection. Id. 233.

The defendant has established no such prima facie case of discriminatory intent here. D/B 25. While criminalizing marijuana sales was evidently part of a movement in the

1930s, there is no proof of any improper motive against blacks or "zeal for white supremacy" in Connecticut, no indication that legislators were "secretive" about their true purpose, and no evidence that the statute arose from cases solely involving blacks. As such, defendant has failed to show that the trial court's factual finding, that there was no discriminatory intent in prohibiting the sale of marijuana, is clearly erroneous. Because there was no such intent, defendant cannot show that the statute violates equal protection.

CONCLUSION

The appeal should therefore be dismissed, or the judgment affirmed.

State of Connecticut

By: _____

James Ralls, SASA juris # 401844
Chief State's Attorney, Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Tel. (860) 258-5807; fax: x5828
James.Ralls@ct.gov
DCJ.OCSA.Appellate@ct.gov

Russell Zentner, S. A. State's Attorney
Michael Gailor, State's Attorney
Judicial District of Middlesex

April, 2019

CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that

(1) the electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and

(4) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(5) the brief complies with all provisions of this rule.

James Ralls, SASA